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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,860	01/05/2004	Uri Amin	1380VAS-US	3870
32964	7590	09/09/2005	EXAMINER	
DEKEL PATENT LTD., DAVID KLEIN BEIT HAROF'IM 18 MENUHA VENAHALA STREET, ROOM 27 REHOVOT, 76209 ISRAEL			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/750,860

Applicant(s)

ARNIN ET AL.

Examiner

DAVID J. ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 2-7, 9, 10 and 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 8, 11-13, 19-21 and 24 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

Claims 3-7,9,10,14-18 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/29/2004.

Applicant elected the claims directed to figures 8C&D and listed claims 1,2,6-17,19 and 20 as being readable thereon. Upon review of the amended claims by the examiner, the examiner has determined that claims 1, 8,11-13,19,20 remain readable on the elected embodiment. However, claim 2 no longer is readable on the elected species as the elected embodiment does not show a first and second attachment members formed with mounting holes for passage of mechanical fasteners therethrough. Therefor, currently claims 1,8,11-13,19,20 and newly added claims 21-24 are pending for action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 11-13, 19, 20-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Zubok, et al (6896676).

Zubok et al a spinal prosthesis comprising a unitary body with at least three attachment points attachable to a spinal structure, said unitary body comprising a flexure assembly positioned between first and second attachment members, wherein flexure of said flexure assembly permits movement of the first attachment member relative to the second attachment member wherein said flexure assembly comprises a multi-part articulating assembly including a first joint member that has a convex contour that articulates with a second joint member that has a concave contour that corresponds to and glides over the convex contour of the first joint member, said first and second joint members being attached to or integrally part of said attachment members; and wherein pedicle screw mounting members extend non-perpendicularly outwards from said first and second attachment members and wherein pedicle screws each having a threaded shank and a swivel head, are attached to said pedicle screw mounting members. The unitary body as disclosed by applicant is defined as body with at least three attachment points that may be attached to the spinal structure as one pre-assembled, contiguous assembly. As shown by Zubok et al the surgeon can simply hold the entire unitary body in place during attachment to the spinal structure. The device of Zubok et al need not be attached to the spinal structure as at least two separate parts.

See figures 8,9,15 showing screw mounting members extending non-perpendicularity outwards from the first and second attachment members, as broadly worded.

Claim 8, the flexure assembly as shown by Zubok et al is integrally formed with the first and second attachment members.

Claim 13, the flexure assembly of Zubok et al is configured to flex omnidirectionally.

Claims 19 and 21, see truncated face formed in the convex member of Zubok et al.

Claim 20, see column 11 of Zubok, et al.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zubok et al (6896676) as applied to claim 1 above, and further in view of Shinn et al (5683465).

The use of an elastomeric boot connected to the first and second attachment members is shown by Shinn et al. The boot of Shinn et al serves to prevent scar tissue from entering into the inner space between the first and second attachment members.

**The flexible toroidal enclosure 46 is included when it is desired to prevent scar tissue (not shown) from forming inside of the disk 10 during healing and when it is desired to prevent organic matter from entering into the disk 10.**

To use an elastic boot to enclose the spinal space between the attachment members of Zubok et al would have been obvious from the teachings of Shinn et al.

Claim 13, the flexure assembly of each of Harrington and Xavier et al is configured to flex omnidirectionally.

Claim 19, see joint members in each of Harrington and Xavier, et al.

Claim 20, see stopper, 68 of Harrington and surfaces 47 & 74 of Xavier et al.

Claims 24, as broadly worded does not distinguish over the pedicle screws of Zubok, et al.

#### ***Allowable Subject Matter***

Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

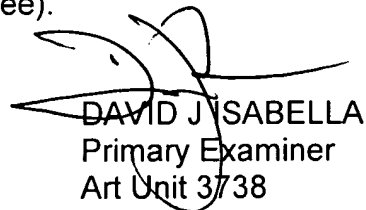
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
August 26, 2005